

REMARKS

Claims 10-19 have been cancelled without prejudice or disclaimer and new claims 20-43 have been added. The fee of \$36.00 for the four (4) claims in excess of 20 is included herewith.

Applicant respectfully requests further examination and reconsideration of claims 20-43, now pending in the application.

The last Office Action mailed from the Patent Office on August 6, 2004 has been carefully considered and indicates that:

- a) Claims 11 and 16 are rejected under 35 *U.S.C. § 112, first paragraph*, as failing to comply with the written description requirement;
- b) Claims 10, 11, 15, and 16 are rejected under 35 *U.S.C. § 102(b)* as being anticipated by Sebastian;
- c) Claims 10 and 11 are rejected under 35 *U.S.C. § 103(a)* as being unpatentable over Falk; and
- d) Claims 12-14 and 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response to the Examiner's rejection of claims 11 and 16 under 35 U.S.C. § 112, *first paragraph*, as failing to comply with the written description requirement, applicant has:

1. Cancelled claims 11 and 16 without prejudice or disclaimer.
2. Added new claims 27, 28, and 30 to describe that the bottom has a plurality of reinforcements, ribs, and sealing blocks so as to eliminate a need for providing antecedent basis for the bottom having only one reinforcing rib or sealing block, as required by the Examiner.

In view of the cancellation of claims 11 and 16 without prejudice or disclaimer and the addition of new claims 27, 28, and 30 to describe that the bottom has a plurality of reinforcements, ribs, and sealing blocks so as to eliminate a need for providing antecedent basis for the bottom having only one reinforcing rib or sealing block, applicant respectfully submits that the Examiner's grounds for the rejection of claims 11 and 16 under 35 U.S.C. § 112, *first paragraph*, as failing to comply with the written description requirement are no longer applicable and applicant therefore respectfully requests that the Examiner withdraw this rejection.

In response to the Examiner's rejection of claims 10, 11, 15, and 16 under 35 U.S.C. § 102(b) as being anticipated by Sebastian, the Examiner's rejection of claims 10 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Falk, and

the Examiner's objection to claims 12-14 and 17-19 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, applicant:

1. Greatly appreciates the Examiner's gracious indication of the allowable subject matter of claims 12-14 and 17-19.
2. Has cancelled claims 10-19 without prejudice or disclaimer.
3. Has added new claims 20-43, wherein:
 - a) Newly added claim 25 includes the limitations of cancelled allowable claims 12 and 17, and therefore shares the same allowable subject matter thereof.
 - b) Newly added claim 32 includes the limitations of cancelled allowable claims 13 and 18, and therefore shares the same allowable subject matter thereof.
 - c) Newly added claims 33, 34, and 35 include the limitations of cancelled allowable claims 14 and 19, and therefore share the same allowable subject matter thereof.

Explanation of support for newly added claims 20-43 can be found at the end of the instant amendment.

Regarding newly added claim 20, newly added claim 20 addresses the note made by the Examiner at page 3, ¶ 6, sub¶ 3 of the last Office Action:

“As a note, the “connecting together” of the “bottom edge of each front wall, bottom parts of the left and right edges of each front wall and the first and second edges of the triangular bottom parts of each gusset” does not require the edges to be connected to each other in any specific manner.”[Emphasis added]

Pursuant to 37 CFR § 1.111(c), newly added claim 20 describes the following advantageous distinctive feature that distinguishes over and avoids the prior art:

“said bottom is formed by connecting to each other said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset, without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset”[Emphasis added]

It was decided in *In re Miller*, 169 USPQ 597 (CCPA 1971) that each and every limitation discussed throughout the instant amendment, *inter alia*, those discussed *supra*, must be met in determining patentability:

"All words in a claim must be considered in judging the patentability of that claim against the prior art."[at 600][Emphasis added]

Even though the limitation "without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset" may be considered a negative limitation by some, it is the only way, and by far the clearest way, to state the limitation, and therefore must be considered in determining patentability. Support for this assertion can be found in the notice entitled "*Practice Re: Technical Rejections*," dated April 30, 1965 (814 O.G. 715), which states that:

"The inclusion of a negative limitation shall not, in itself, be considered a sufficient basis for objection to or rejection of a claim."[Emphasis added]

And, in *In re Duva*, 156 USPQ 90 (CCPA 1967), where the court stated:

"Absent sufficient CN ions to prevent deposition induced by said palladous salt" in claim is not improper negative limitation rendering claim objectionable, even assuming that a positive expression defining operable proportions can be employed...."[at 90][Emphasis added]

The negative limitation "without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset" is of critical importance and obviously a point of novelty since it provides the advantageous feature of allowing the bag to be stable when free standing on its bottom by virtue of the bottom having a uniform thickness and being coplanar due to no overlapping surfaces.

So it has been shown *supra* that the configuration of the bottom of the bag described in newly added claim 20 is not merely a matter of design choice but is rather significant and of critical importance, and therefore must be considered in determining patentability because it has been held that configuration must be considered in determining patentability if the configuration is significant, as was decided in *In re Dailey and Eilers*, 149 USPQ 47 (CCPA 1976), where the court held:

"Appellants have presented no argument which convinces us that the particular configuration of their container is significant....See *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459."
[Emphasis added]

And, even though the advantageous feature of newly added claim 20 discussed *supra* may not have been disclosed and discussed specifically in the

specification of the patent application as it was originally filed, it still must be relied upon as evidence of patentability, as was decided in *In re Chu*, 66 F.3d 292, 36 USPQ.2d 1089 (Fed. Cir. 1995), where the court held:

"Because the Board was required to consider the totality of the record, the Board was not free to disregard the evidence and arguments presented by Chu in response to the...rejection. Additionally, the Board erred in apparently requiring Chu's evidence and arguments responsive to the...rejection to be within his specification in order to be considered. To require Chu to include evidence and arguments in the specification regarding whether placement of the SCR catalyst in the bag retainer was a matter of "design choice" would be to require patent applicants to divine the rejections the PTO will proffer when patent applications are filed."[at 1094] [Emphasis added]; and

"We have found no cases supporting the position that a patent applicant's evidence and/or arguments traversing a...rejection must be contained within the specification. There is no logical support for such a proposition as well, given that [unpatentability] is determined by the totality of the record including, in some instances, most significantly, the evidence and arguments proffered during the give-and-take of ex parte patent prosecution." [at 1095][Emphasis added]

And further, even though the advantageous feature of newly added claim 20 discussed *supra* may be considered simple and accomplishes only a small but

genuine improvement by some is not sufficient reason to deny it patent protection, as was decided in *Schnell et al. v. The Allbright-Nell Company et al.*, 146 USPQ 322 (Court of Appeals, Seventh Circuit 1965), where the court held:

"This now seems simple...in the light of the Schnell teaching, but is was evidently not at all...at the time of the invention. Those working in the field did not accomplish Schnell's results. That fact supports the conclusion that Schnell achieved patentable inventions. Pyle Nat. Co. v. Lewin, 7 Cir., 1937, 92 F.2d 628, 630, 35 USPQ 40, 42."[at 324][Emphasis added]

The Board of Appeals expressed the same concept when it held in *Ex parte Grasenick and Gessner*, 158 USPQ 624 (Patent Office Board of Appeals 1967), that:

"This rejection is in error. An improvement over the prior art, even though it be simple...is patentable...."[at 624][Emphasis added]

Attention is also respectfully directed in this regard to the decisions in *Mercantile National Bank of Chicago et al. v. Quest, Inc. et al.*, D.C.N.D. Indiana, 166 USPQ 517; *In re Shelby*, 136 USPQ 220; and *In re Irani and Moedritzer*, 166 USPQ 24, which all indicate that simplicity does not operate as a bar to patentability.

Turning now to the references, and particularly to Sebastian, in contradistinction, Sebastian does not teach “said bottom is formed by connecting to each other said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset, without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset”[Emphasis added] as required by the advantageous distinctive feature of newly added claim 20 discussed *supra*, but rather Sebastian teaches a bottom formed by connecting overlapping surfaces to each other, as shown in **FIGURES 2 and 5** of Sebastian and as discussed at numerous occurrences throughout Sebastian, for example:

“The folding out of the pleats creates triangular folds of material **32** that partially covers the bottom panels 14,16.”[col. 4, lines 43-44 of Sebastian][Emphasis added]; and

“...the triangular folds of material **32** [cover] the bottom panels 14,16....”[col. 4, lines 50-51 of Sebastian][Emphasis added]

With this arrangement of Sebastian, *inter alia*, the bag would not be considered very stable when free standing on its bottom by virtue of the bottom having a non-uniform thickness and not being coplanar, which are both due to non-uniformly overlapping surfaces. The bottom having a non-uniform thickness and not

being coplanar is exemplified by the triangular folds of material **32** only partially covering the bottom panels **14,16**, as discussed at col. 4, lines 43-44 of Sebastian, where it is disclosed:

“The folding out of the pleats creates triangular folds of material **32** that partially covers the bottom panels **14,16**.”
[Emphasis added]

With reference to Falk '011, Falk '011 does not teach “said bottom is formed by connecting to each other said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset, without any overlapping with each other of said bottom part of said front face, said bottom part of said back face, and said bottom part of each gusset”[Emphasis added] as required by the advantageous distinctive feature of newly added claim 20 discussed *supra*, but rather Falk '011 teaches a bottom formed by connecting overlapping surfaces to each other, as shown in **FIGURES 3-5, 7, and 8** of Falk '011 and as discussed at numerous occurrences throughout Falk '011, for example:

“...oppositely folding in end portions of the front and back halves of the blank into overlapping relation and adhesively securing such end portions including gusset elements thereof to the bottom panels....”[page 2, lines 57-61 of Falk '011][Emphasis added];

“...folding in end portions of the blank into overlapping relation and adhesively securing such end portions to the bottom panels....”[page 2, lines 76-79 and 95-97 of Falk ‘011][Emphasis added]; and

“When the bottom panels have been formed as described, adhesive is smeared upon the surfaces bounded by the lines *a, a* and *b, b* of Figure 3 [inferring overlapping surfaces].”[page 1, lines 88-91 of Falk ‘011][Emphasis added].

With this arrangement of Falk ‘011, *inter alia*, the bag would not be considered very stable when free standing on its bottom by virtue of the bottom having a non-uniform thickness and not being coplanar, which are both due to non-uniformly overlapping surfaces. Free standing stability is not an issue because the bag is not intended to be free standing but rather is intended to be supported by virtue of having as an important object of the bag the ability to fit and be placed in or around a container, as discussed at page 1, lines 1-5 of Falk ‘011, where it is disclosed:

“This invention relates to paper bags, and has for an important object the production of a polygonal bag adapted to be placed in or about a round container and to substantially fit the container.”[Emphasis added].

Regarding newly added claim 43, pursuant to 37 CFR § 1.111(c), newly added claim 43 describes the following advantageous distinctive feature that distinguishes over and avoids the prior art:

“said gusset bag is made of plastic”
[Emphasis added]

With reference to using plastic for the paper bags of Sebastian and Falk '011 as suggested by the Examiner, applicant respectfully submits that the Examiner has taken facts beyond the record by stating at page 3, ¶ 6, sub¶ 2, lines 2-6 of the last Office Action the following statement that is contrary to the PTO policy in *MPEP* § 706.02(a) directing Examiners never to overlook the importance of allowing claims that properly define patentable subject matter:

"It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic for the bag of Falk '011, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416."[Emphasis added]

It is improper if not inequitable for the Examiner to rely on facts beyond the record, such as the fact *supra*, as the sole evidence for a rejection, as was decided in *In re Ahlert*, 165 USPQ 418, 420 (CCPA 1970), where the court held:

"Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art..."[at 420][Emphasis added]

And, in *In re Howard*, 394 F.2d 869 (CCPA 1968), where the court held:

"Without some concrete evidence (of which there is none) I do not think that it is possible to find that the system of this application is old or that it is obvious under Section 103..."[at 872][Emphasis added]

Furthermore, the Examiner is not obligated to find such a rejection simply to be able to reject every claim in the application. The Examiner relies upon *In re Leshin*, 125 USPQ 416 to hold that it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Upon review of *In re Leshin*, however, it is revealed that this is not entirely true. *Leshin* holds that only a selection of a specific material based upon a particular purpose from a group of that kind of known materials would be obvious.

“...applicant concedes that the plastics he uses are well known, “but,” he says, “applicant has had to select them for his particular purpose.” Mere selection of known plastics to make a container-dispenser of a type made of plastics prior to the invention, the selection of the plastics being on the basis of suitability for intended use, would be entirely obvious”[at 417-418][Emphasis added]

Thus, the *Leshin* test requires that in order for the selected material to be considered obvious, there must be a known group of similar kinds of materials from which the selection is made based upon a particular purpose. This is not the case at hand. Applicant has not selected a specific kind of plastic for its particular purpose from a group of known plastics, but rather applicant has selected plastic in general, and therefore does fall under the *Leshin* test.

Quod erat demonstrandum that *Leshin* does not broadly hold that it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice as suggested by the Examiner, but rather *Leshin* specifically holds that it would be obvious only

if the selection of a material based upon a particular purpose is made from a known group of similar kinds of materials.

If the Examiner still maintains the rejection, applicant respectfully requests that the Examiner provide a reference that teaches the advantageous distinctive feature of newly added claim 43 discussed *supra* as required by *In re Howard* and *In re Ahlert* discussed *supra* or an affidavit detailing the Examiner's knowledge as one of ordinary skill in the art to which newly added claim 43 pertains affirming that "It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic for the bag of Falk '011, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416."[Emphasis added], as required by 37 CFR § 1.107(b), where it is ruled:

"When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons."[Emphasis added]

In view of the cancellation of claims 10-19 without prejudice or disclaimer, the addition of new claims 20-43, and the arguments presented *supra*, applicant respectfully submits that the Examiner's grounds for the rejection of claims 10, 11, 15, and 16 under 35 U.S.C. § 102(b) as being anticipated by Sebastian, the Examiner's grounds for the rejection of claims 10 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Falk, and the Examiner's grounds for the objection to claims 12-14 and 17-19 as being dependent upon a rejected base claim are no longer applicable and applicant therefore respectfully requests that the Examiner withdraw these rejections and this objection.

Regarding support for newly added claims 20-43 generally, applicant respectfully acknowledges that drawing the line between permissible clarification and impermissible addition is a different task for the Examiner and one to be resolved in the context of the facts of the particular case, as was decided in *Harris v. Air King Products Co.*, 183 F.2d 158, 160, 86 USPQ 57 (2d Cir. 1950) (Judge Learned Hand); and in *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971), where the court held:

"'New Matter' is a technical legal term in patent law - a term of art. Its meaning has never been clearly defined for it cannot be. The term is on a par with such terms as infringement, obviousness, priority, abandonment, and the like which express ultimate legal conclusions and are in the

nature of labels attached to results after they have been reached by processes of reasoning grounded on analysis of factual situations. In other words, the statute gives us no help in determining what is or is not "new matter." We have to decide on a case-by-case basis what changes are prohibited as "new matter" and what changes are not.

"In a sense, anything inserted in a specification that was not there before is new to the specification but that does not necessarily mean it is prohibited as "new matter"."[Emphasis added]

Vacillation caused by this difficulty has been confirmed in the decision in *Helms Prods. v. Lake Shore Mfg. Co.*, 227 F.2d 677, 107 USPQ 313 (7th Cir. 1955), where the court held:

"...the Patent Office is constantly determining and defining what is or what is not new matter...."[Emphasis added]

It has been decided, however, that matter added that clarifies or makes definite that which was inherent in the original disclosure is not new matter and is permitted, as was decided in *Triax Co. v. Hartman Metal Fabricators, Inc.*, 479 F.2d 951, 956-57, 178 USPQ 142 (2d Cir. 1973), where the court held:

"Amendments which merely clarify or make definite that which was expressly or inherently disclosed in the original

application...do not violate the rule on new matter."[Emphasis added]

It has been decided further that matter added that makes explicit matter that was implicit or intrinsic in the original disclosure is not new matter and is permitted, as was decided in *Tektronix, Inc. v. United States*, 445 F.2d 323, 170 USPQ 100 (Ct.Cl. 1971), where the court held:

"An applicant may by amendment make explicit a disclosure which was implicit in the application as filed."[Emphasis added]

Furthermore, it has been decided that matter added that is something that might fairly be deduced from the original application is not new matter and is permitted, as was decided in *Acme Highway Prod. Co. v. D.S. Brown Co.*, 431 F.2d 1074, 167 USPQ 129 (6th Cir. 1970), where the court held:

"The law is clear that subject matter may be added to an application by way of amendment...without impairment to the right to the original filing date, where the added subject matter is "something that might fairly be deduced from the original application"...."[Emphasis added]

Moreover, a structural element added that has been necessarily implicit in the original disclosure does not constitute new matter and is permitted, as was decided

in *Interchemical Corp. v. Watson*, 145 F.Supp. 179 (D.C.D.C. 1956), affirmed 251 F.2d 390, 102 U.S.App. D.C. 149, where the court held:

"In order to establish that new matter has not been introduced into the disclosure by amendment contrary to 35 U.S.C. 132, the evidence must show that limitation or characterization added by amendment is necessarily and inevitably inherent to that described in original specification...."
[Emphasis added]

The definition of "is necessarily and inevitably inherent" was succinctly expressed in the decision in *Technicon Instruments Corp. v. Coleman Instruments, Inc.*, 255 F. Supp. 630, 640-41, 150 USPQ 227 (N.D. Ill. 1966), affirmed 385 F.2d 391, 155 USPQ 369 (7th Cir. 1967), where the court held:

"By disclosing in a patent application a device that inherently performs a function, operates according to a theory, or has an advantage, a patent applicant necessarily discloses that function, theory, or advantage, even though he says nothing concerning it."[Emphasis added]

Furthermore, properties that flow inherently are permissible, as was decided in *Westmoreland Specialty Co. v. Hogan*, 167 F. 327 (3rd. Cir. 1909), where the court held:

"An applicant is allowed to rely upon advantages...that flow inherently...."
[Emphasis added]

And as such, an applicant can add by amendment statements as to properties, as was decided in *Eli Lilly & Co. v. Premo Pharmaceutical Laboratories, Inc.*, 207 USPQ 719 (3rd Cir. 1980), where the court held:

"Inasmuch as a chemical compound and its properties "are one and the same thing," newly discovered properties of the compound not disclosed in the original specification or abstract may be added by amendment without being treated as "new matter" under 35 U.S.C. 132."[Emphasis added]

In applying the decisional law discussed *supra*, applicant will discuss *infra* support for newly added claims 20-43 specifically.

Support for newly added claim 20 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the the specification at page 3, lines 5 and 8-10, at page 4, line 10, at page 6, lines 2-3 and 4-6, and at page 13, lines 2-4; in original claims 1 and 6; and in **FIGURES 5** and **6** of the drawing. An amendment can find support in the drawing, as was decided

in *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc.*, 193 USPQ 467 (D.C.N.D. California 1977), where the court held:

"[M]aterial added [that] is clearly disclosed by the original drawings...is not new matter."[at 473][Emphasis added]; and

"An amendment does not constitute new matter where the amendment...includes matter clearly disclosed by drawings in the original application."[at 476][Emphasis added]

Therefore, newly added claim 20 does not constitute new matter.

Support for newly added claim 21 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 7, lines 1-5; and in **FIGURES 5 and 6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 21 does not constitute new matter.

Support for newly added claim 22 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in **FIGURES 5, 6, and 8** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 22 does not constitute new matter.

Support for newly added claim 23 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 4, lines 22-23 and at page 7, lines 21-23; in original claim 5; and in **FIGURES 5, 6, and 8** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 23 does not constitute new matter.

Support for newly added claim 24 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 3, line 14 and at page 6, lines 14-15 and 19-21; in original claims 3 and 6; and in **FIGURES 5 and 6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 24 does not constitute new matter.

Support for newly added claim 25 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in **FIGURES 5 and 6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 25 does not constitute new matter.

Support for newly added claim 26 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the

specification at page 3, line 5, at page 6, line 24, at page 7, lines 6 and 21, at page 8, line 21, and at page 13, line 11; in original claim 1; and in **FIGURE 6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 26 does not constitute new matter.

Support for newly added claim 27 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 5, lines 15 and 17-18 and at page 7, lines 11-13; in original claim 3; and in **FIGURES 5 and 6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 27 does not constitute new matter.

Support for newly added claim 28 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 5, line 15 and at page 7, lines 11-13; in original claim 3; and in **FIGURES 5 and 6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 28 does not constitute new matter.

Support for newly added claim 29 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 5, lines 15-16; and in **FIGURES 5 and 6** of the drawing. See

Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.

Therefore, newly added claim 29 does not constitute new matter.

Support for newly added claim 30 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 5, line 15 and at page 7, lines 11-13; in original claim 3; and in **FIGURES 5** and **6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.* Therefore, newly added claim 30 does not constitute new matter.

Support for newly added claim 31 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 5, lines 15-16; and in **FIGURES 5** and **6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.* Therefore, newly added claim 31 does not constitute new matter.

Support for newly added claim 32 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 2, lines 17-19, at page 3, lines 16-22, at page 5, lines 2 and 4, at page 8, line 22 to page 9, line 5, and at page 13, lines 11-13; in original claims 1, 2, 6, and 7; and in **FIGURES 7** and **8** of the drawing. See *Corometrics Medical*

Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra. Therefore, newly added claim 32 does not constitute new matter.

Support for newly added claim 33 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 3, lines 23-25 and at page 9, lines 5-9; and in **FIGURE 8** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.* Therefore, newly added claim 33 does not constitute new matter.

Support for newly added claim 34 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 3, line 23 and at page 9, lines 5-9; and in **FIGURE 8** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.* Therefore, newly added claim 34 does not constitute new matter.

Support for newly added claim 35 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 3, line 23 and at page 9, lines 5-9; and in **FIGURE 8** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.* Therefore, newly added claim 35 does not constitute new matter.

Support for newly added claim 36 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in **FIGURES 5 and 6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 36 does not constitute new matter.

Support for newly added claim 37 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in **FIGURES 5 and 6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra*. Therefore, newly added claim 37 does not constitute new matter.

Support for newly added claim 38 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 3, line 10. Therefore, newly added claim 38 does not constitute new matter.

Support for newly added claim 39 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 3, lines 12-13, at page 4, lines 13, 16, and 19, at page 6, lines 16-19, at page 8, lines 16-17, and at page 13, lines 9-10; in original claims 3 and 6; and in **FIGURES 3 and 7** of the drawing . See *Corometrics Medical Systems, Inc.*

v. Berkeley Bio-Engineering, Inc. supra. Therefore, newly added claim 39 does not constitute new matter.

Support for newly added claim 40 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 6, lines 7-10; and in **FIGURES 2** and **4-6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.* Therefore, newly added claim 40 does not constitute new matter.

Support for newly added claim 41 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 6, lines 12-13; and in **FIGURES 2** and **8** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.* Therefore, newly added claim 41 does not constitute new matter.

Support for newly added claim 42 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at least in the specification at page 4, line 10, at page 8, line 3, and at page 13, line 4; in original claim 6; and in **FIGURES 2** and **4-6** of the drawing. See *Corometrics Medical Systems, Inc. v. Berkeley Bio-Engineering, Inc. supra.* Therefore, newly added claim 42 does not constitute new matter.

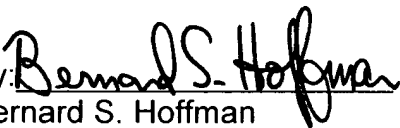
Support for newly added claim 43 can be found clarifyingly and/or inherently and/or explicitly and/or implicitly and/or intrinsically and/or deducibly at numerous occurrences throughout the specification. Therefore, newly added claim 43 does not constitute new matter.

The prior art cited but not relied upon has been dully noted.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the rejections and objection are earnestly solicited. Allowance of claims 20-43 at an early date is earnestly solicited.

Respectfully,

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